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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/788,545	02/21/2001	Michael Orr	P-3059-US	5618
35856	7590	03/27/2012	EXAMINER	
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ART UNIT	PAPER NUMBER			
		3627		
MAIL DATE	DELIVERY MODE			
03/27/2012	PAPER			

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MICHAEL ORR,
BOAZ AV-RON,
UDI SEGALL,
YAIR SHAPIRA,
ZVI PELED,
YOAV WEISS,
ARIEL SHULMAN, and
AMNON SIEV

Appeal 2010-003521
Application 09/788,545
Technology Center 3600

Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
JOSEPH A. FISCHETTI, *Administrative Patent Judges*.

LORIN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Michael Orr, et al. (Appellants) seek our review under 35 U.S.C. § 134 (2002) of the final rejection of claims 1, 2, 7-9, 11, 12, 15, 17-19, and 21. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.¹

THE INVENTION

The invention relates to “the field of data communications.”

Specification 1:8.

Claim 1, reproduced below, is illustrative of the subject matter on appeal.

1. A system for enhancing perceived throughput between a client and a server, said system comprising:

a predictive server in association with said server, wherein said predictive server comprises a server analyzer unit and a server storage unit; and

a client agent in association with the client, wherein the client agent comprises an agent analyzer unit and an agent storage unit;

wherein the predictive server analyzes, at the predictive server analyzer unit, a first response that is received from said server acting on a request for a web page and, accordingly generates at the predictive server storage unit a predictive list of requests for objects which are needed for presenting the requested web page, and wherein the predictive server further issues predictive requests to the server, receives predictive responses from the server, and forwards the first response and the received predictive responses to the client agent; and

wherein the client agent receives, with the agent analyzer unit of the client agent, via the predictive server, the first response, analyzes the first response, automatically forwards said first response

¹ Our decision will make reference to the Appellants’ Appeal Brief (“App. Br.”, filed May 28, 2009) and Reply Brief (“Reply Br.”, filed Nov. 2, 2009), and the Examiner’s Answer (“Answer,” mailed Sep. 2, 2009).

to the client, receives from the client a request for an object contained in the first response and is needed for presenting the requested web page, compares the request for said object with the already received predicted responses, and when an already received corresponding predicted response exists, the existing predictive response is forwarded to the client.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Klein US 7,047,485 B1 May 16, 2006

The Examiner states: “‘Official Notice’ is taken that the concept and advantage of sending a ‘fake’ response before a real response is well known in the art since web pages contain objects, such as images or text, which may take longer to download [than] other objects.”

Answer 5. [Official Notice]

The following rejections are before us for review:

1. Claims 1, 2, 7, 8, 11, 12, 15, 17, 18, and 21 are rejected under 35 U.S.C. § 102(e) as being anticipated by Klein.
 2. Claims 9 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Klein and Official Notice.

ANALYSIS

The rejection of claims 1, 2, 7, 8, 11, 12, 15, 17, 18, and 21 under 35 U.S.C. §102(e) as being anticipated by Klein.

Independent claim 1 is directed to a “system for enhancing perceived throughput between a client and a server ... comprising: a predictive server in association with said server, wherein said predictive server comprises a server analyzer unit and a server storage unit”

“Because the hallmark of anticipation is prior invention, the prior art reference—in order to anticipate under 35 U.S.C. § 102—must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements ‘arranged as in the claim.’ *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983).” *Net MoneyIN Inc. v. VeriSign, Inc.*, F.3d (Fed. Cir. 2008).

The Examiner points to element 116 in Fig. 1 of Klein as expressly describing the predictive server as claimed. Answer 3 (“[Klein teaches] a predictive server in association with said server wherein said predictive server comprises a server analyzer unit and a server storage unit (column 6, lines 10-20, fig 1: web Agent 116 running on web server 112); and 7 (“Argument C: the web agent 116 is not operating as the claimed predictive server . . . In response, the Examiner respectfully disagrees.”)

Element 116 is a “Web Agent,” which is a “software agent code” (col. 4, l. 46). This software code does not comprise “a server analyzer unit and a server storage unit” as the claim requires. Accordingly, claim 1 does not read on Klein. Klein does not disclose all elements of the claim arranged as in the claim.

The other independent claim, claim 11, is directed to a “method for enhancing perceived throughput for the delivery of a requested web page between a server and a client.” The claim calls for “[a] predictive server automatically transferring [a first response of the server as a result of a request issued by the client for [a] requested web page] toward the client by means of [a] client agent.”

In rejecting claim 11, the Examiner relies on the position taken in rejecting claim 1. Answer 5. Accordingly, the Examiner takes the position

that Klein's element 116, the "Web Agent," "automatically transfer[s] [a first response of the server as a result of a request issued by the client for [a] requested web page] toward the client by means of [a] client agent" (claim 11) as claimed.

Element 116 provides an Object List 126 of Web Page Objects 128 (which are on the server) on request from Java Applet 124 (which is on the client).

Once Java Applet 124 initializes, a request is made by Java Applet 124 over network 102 to Web Agent 116 running under control of Web Server 112. The nature of the request is to retrieve from Web Agent 116, statistical information that relates to which web page is most often accessed directly after the current web page being viewed at this moment in Web Browser 110.

Col. 6, ll. 10-17. But Klein does not describe element 116 as sending predictive responses toward Java Applet 124 (corresponding to the claimed client agent) such that "the client receiv[es] the first response and issu[es] a first request for an object contained within the first response and is needed for presenting the requested web page, the first request is forwarded to the [Java Applet 124]; and the [Java Applet 124] comparing the first request to the received predictive responses and, if a corresponding predictive response exists, the existing predictive response is forwarded to the client." Claim 11.

The Examiner argues that "Klein et al teach that requests are made for objects or web pages prior to being requested and are then stored in the browser cache and made available to the user prior to actually needing those pages (see column 6, lines 10-35, column 7, lines 5-37)." Answer 8. Klein's Java Applet 124 is part of pre-caching technique. Although it is possible that Java Applet 124 makes a comparison as part of the pre-caching

sequence, “[i]nherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient” *Hansgirg v. Kemmer*, 102 F.2d 212, 214 (CCPA 1939), quoted in *Continental Can Co. USA v. Monsanto Co.*, 948 F.2d 1264, 1269 (Fed. Cir. 1991). Moreover, the claimed process does not merely compare objects or web pages but “compar[es] the first request to the received predictive responses and, if a corresponding predictive response exists, the existing predictive response is forwarded to the client” (Claim 11). We find that Klein does not disclose all elements of claim 11 arranged as in the claim.

The rejection of claims 1, 2, 7, 8, 11, 12, 15, 17, 18, and 21 is reversed.

The rejection of claims 9 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Klein and Official Notice.

Claims 9 and 19 depend on claims 1 and 11, respectively. The position taken with respect to the subject matter of claims 1 and 11 is maintained. Answer 5. Since we do not find that Klein describes the subject matter of claims 1 and 11, a *prima facie* case of obviousness has not been made out for the subject matter of claims 9 and 19 in the first instance.

CONCLUSIONS

The rejections of claims 1, 2, 7, 8, 11, 12, 15, 17, 18, and 21 under 35 U.S.C. § 102(e) as being anticipated by Klein and claims 9 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Klein and Official Notice are reversed.

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DECISION

The decision of the Examiner to reject claims 1, 2, 7-9, 11, 12, 15, 17-19, and 21 is reversed.

REVERSED

JRG